IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 13.02.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

S.A.No.656 of 1997

1.Apparaju
2.Chinnaponnu Ammal
3.Kaliyamoorthi
4.Sekar
5.Murugan
6.Tamizhrasi .. Appellants/Plaintiffs
(Appellants 2 to 5 brought on
record as LRs of the deceased
sole appellant as per order
of Court dated 26.6.2002
made in CMP.Nos.11589 & 11590/2001)

(6th Appellant was brought on
record as LRs of the deceased
sole appellant as per order
of Court dated 24.7.2003
made in CMP.No.9175/2002)

vs.

1.Natesan
2.Thirukkanni
3.Venkatesa Gounder
4.Gurnathan .. Respondents/Defendants

Prayer: This second appeal has been preferred against the decree and judgment dated 16.04.1996 passed by the learned Principal District Judge, Villupuram, in A.S.No.1/1996, confirming the decree and judgment dated 30.9.1991 in O.S.No.1333/89 on the file of the Additional District Munsif, Villupuram.

For Appellants : Mr.S.Venketeswaran
For Respondents : Mr.R.Krishnan

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JUDGMENT

This appeal has been preferred against the decree and judgment in A.S.No.1 of 1996 on the file of the Court of Principal District Judge, Villupuram. The plaintiff in O.S.No.1333/1989, who has lost his case before the Courts below, is the appellant herein.

2. The averments in the plaint relevant for the purpose of this appeal are as follows:-

2(a) The suit is for declaration in respect of the plaint 'B' Schedule property and also for delivery of plaint 'C' schedule property which forms part of plaint 'B' schedule property and also for mesne profits. The plaint 'A' schedule properties originally belonged to the plaintiff's mother Thayarammal, wife of Pachai Gounder, purchased under a sale deed dated 16.10.1923 from Ganapathy Pillai S/o.Arikrishna Pillai. Thayarammal and her husband Pachai Gounder died some 25 years ago. The plaintiff and his brothers viz. Perumal, Mariyappan and Ganapathy were in possession and enjoyment of the plaint 'A' schedule properties as the sons of Thayarammal and Pachai Gounder. Perumal and Ganapthy died leaving their sons. Subramani, Murugesan and Ramamoorthy are the sons of perumal. Chinnasamy and Vasudevan are sons of Ganapthy. The old patta for the suit property is 132.

2(b) The plaintiff and his brother Mariappan and his brother Perumal's sons and his brother Ganapathy's sons have divided the suit properties and other properties orally on 20.10.1989. In the said oral partition the suit 'B' schedule property was allotted to the share of the plaintiff. From the date of partition the plaintiff alone enjoyed the suit 'B' schedule property. The defendants, who are the adjacent land owners of the suit property, highhandedly and illegally trespassed into the suit 'B' schedule property to an extent of 0.11 cents which is described as 'C' schedule property, when the plaintiff was away from the village in connection with his business. When this was questioned by the plaintiffs' on 13.11.1989, the defendants openly denied the plaintiff's title to the plaint 'C' schedule property. Hence, the suit.

3. The defendants in their written statement would contend that it is not correct to say that the plaint 'A' schedule property originally belonged to one Thayarammal under a sale deed dated 16.10.1922 and that after her death the plaintiff and his brothers have enjoyed the same and that the plaintiff have effected partition of the A schedule property as between themselves orally on 20.10.1989 and that in the oral partition 'B' schedule property was allotted to the share of the plaintiff. The defendants have not trespassed into the suit property. The plaintiff and his brothers are not in possession of the suit property and no patta has been issued in respect of the suit property in his favour. The entire extent of the suit survey No.348/3 is 2 acres 15 cents. Muthalammal, wife of Ganapathy Gounder, has purchased an extent of 0.96 cents on

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19.2.1961 from one Panchalan. She has also purchased an extant of 0.66 cents on 9.2.1962 from one Kalivaratha Gounder on a valid consideration of Rs.1000/-. In the suit property Muthalammal has 1 acres 62 cents. As a matter of fact she has been paying kist. The said Muthalammal, thereafter, sold 1 acre 44 cents on 17.11.1966 to one Ramalinga Gounder, father of D1 to D3, for valid consideration of Rs.5,000/-. From the date of purchase Ramalinga Gounder had enjoyed the suit property and the said Ramalinga Gounder have prescribed his title by adverse possession also. After the death of the said Ramalinga Gounder, D1 to D3 are entitled to the property measuring 1 acre 44 cents in the suit survey number. Neither the plaintiff nor his brothers are having right in the suit property. The defendants have not encroached the plaint 'B' schedule property. The defendants are in possession and enjoyment of the suit survey number property. There is no cause of action for the plaintiff. Hence the suit is liable to be dismissed with costs.

4. On the above pleadings the learned trial judge had framed seven issues for trial. P.W.1 to P.W.3 were examined and Ex.A.1 to Ex.A.16 were marked on the side of the plaintiff. On the side of the defendants, first defendant was examined as D.W.1 and Ex.B.1 to Ex.B.32 were marked. After going through the oral and documentary evidence, the learned trial judge had come to the conclusion that the plaintiff is not entitled to any relief under the suit and consequently dismissed the suit. Aggrieved by the findings of the trial Court, the plaintiff has preferred an appeal in A.S.No.1/1996 on the file of the Court of Principal District Judge, Villupuram, who has also dismissed the appeal confirming the decree and judgment of the trial Court. Hence, the plaintiff is before this Court by way of this second appeal.

5. The substantial questions of law involved in this second appeal are as follows:-

> "a) Whether in law is the lower appellate Court is right in omitting to note that under Ex.A.7 and A.8 the vendor Muthalammal had no right or interest to convey 1 acre 44 cents to respondents' father?
>
> b) Whether in law, are the courts below right in holding that the respondents have acquired title by adverse possession?

6.The Points:- The plaintiff has not entered into the box before the trial Court to depose his case. The plaintiff's son was examined as P.W.1. The plaint 'B' schedule property is 28 cents in S.No.348/3B in Koliyanoor Village. Ex.A.1 is the sale deed dated 16.10.1923 in favour of Thayarammal. According to the plaintiff Thayarammal is his mother. P.W.1, the son of the plaintiff, would depose that both Thayarammal and her husband Pachai Gounder died and after their death, their children Perumal, Mariyappan and Ganapathy and he (PW.1) were in possession and enjoyment of the suit property. Perumal and Ganapathy expired and on 20.10.1989 there was an oral partition between the sharers and in that partition the plaintiff got 23 cents in the suit survey number property.

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Ex.A.2 & A.3 are the tax receipts. Ex.A.1 is only a certified copy and not the original sale deed. Ex.A.2 and A.3 do not confirm that the tax paid under the same were in respect of the suit survey number property. On the other hand, it is the case of the defendant that one Muthalammal had purchased 2 acres 15 cents in the suit survey No.348/3 from one Panchalan on 19.2.1961 under Ex.B.1-sale deed. The said Muthalammal on 9.2.1962 had executed a sale deed in favour of Kalivaratha Gounder in respect of 66 cents out of 2 acres 15 cents in S.No.348/3. Ex.B.3 to B.5 will go to show that the said Muthalammal was in possession and enjoyment of suit survey number property. On 17.11.1966 Muthalammal had executed a sale deed in favour of Ramlinga Gounder in respect of 1 acre 45 cents in the suit survey number property. The vendee under Ex.B.7 is the father of the defendants. Ex.B.8 is the patta in favour of the defendants in respect of the suit survey number property. Ex.B.9 is the UDR patta in respect of the suit survey number property in favour of the defendants. Ex.B.10 to B.34 are the kist receipts in favour of the defendants. Under such circumstances, the plaintiff has failed to prove his title and possession in respect of the suit survey number property and not even the original sale deed in favour of the mother of the plaintiff was produced in this case. Both the Courts below have rightly come to the conclusion that the plaintiff is not entitled to any relief under the suit, which does not warrant any interference from this Court. Points are answered accordingly.

7. In the result, the appeal is dismissed confirming the decree and judgment in A.S.No.1/1996 on the file of the Court of Principal District Judge, Villupuram, with costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ssv

To,
1.The Principal District Judge, Villupuram.
2.The Additional District Munsif, Villupuram.
3. The Section Officer, VR Section,
High Court, Madras.

- 1 CC To M/s.Hema Sampath, Advocate SR NO.9105
- 1 CC To Mr.A.Sivaji, Advocate SR NO. 8759

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